Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL
First Appeal No. 671 of 2001
(Old F.A. No. 1177 of 1990)

Gram Sabha Kafald, Patti Hinsriya Khal, District Tehri Garhwal, through Sri Bhupati Ram Pradhan Gram Sabha Kafald, Resident of Village Kafald Patti Hinsriyakhal, Tehsil Deoprayag, District Tehri Garhwal (U.P.) (Defendant)

…..Appellant.

Vs.

Sri Raghu Nandan Prasad Pandey, Son of Sri Ghananand Pandey, aged about 50 years, resident of village Nail Tornu, Patti Hinsriyakhal, District Tehri Garhwal. (Plaintiff)

……..Respondent.

Sri Rajendra Dobhal, learned Standing Counsel for the appellant-defendant.
Sri Lalit Belwal, Advocate, learned counsel for the respondent.

Date December 13, 2006
P.C.: Hon'ble B.S. Verma, J.

This appeal is directed against the judgment and decree dated 15-9-1990 passed by the then District Judge Tehri Garhwal, in civil Suit No. 21 of 1986, Raghunath Prasad Pandey Vs. Gram Sabha Kafald, whereby the suit of the plaintiff-respondent was decreed for recovery of Rs. 4,422-60 with proportionate costs against the defendant with pendente lite and future interest at 12% per annum.

Brief facts of the case are that the defendant-appellant gave a contract to the plaintiff for construction of a school building at village Kafald for Rs. 46,400/- under a contract executed on 25.1.1983 between the parties, thereby the defendant was to supply timber for the contract work free of cost. Regarding cement required for construction, permit was to be made by the defendant. The plaintiff took up the construction work, started digging foundation and made site development including collecting stones, stone ballast, mud mortal and sand at the site, but no construction work could be started without cement which was to be arranged by means of permit. The Pradhan of the village went to the block office to arrange permit for cement and asked the plaintiff to meet

him on 8-2-1983 at Takoli in that regard. When the plaintiff went to Takoli, the Pradhan told him that he was going to block office for making arrangement of cement permit and asked the plaintiff to meet him after 4-5 days. On 13.2.1983, he went to village Kafald to meet the Pradhan but he was informed by Up Pradhan Mani Ram that the Pradhan had gone out of station and necessary arrangements for cement, timber etc. would be made when he returns and till then, he should stop the construction work. It was for the reason that cement could not be made available, the plaintiff stopped the work. Subsequently in the beginning of March 1983, the defendant wrote a letter to the plaintiff informing him that its Pradhan had gone to block office on 31.1.1983, but his request for arrangement of cement permit was not accepted by the Block Development Officer (***for short B.D.O.)*** and the B.D.O. was also objecting to the grant of contract to the plaintiff. The Pradhan advised him to contract the B.D.O. and to remove objections for issue of cement permit. In pursuance of the said letter, the plaintiff went to the office of the B.D.O. time and again, who refused to listen to him and told that Pradhan should approach him in the matter in issue. Suddenly in the month of April 1983, plaintiff received a letter dated 9-4-1983 from the defendant whereby the contract between the parties was terminated arbitrarily. The plaintiff could not undertake the contract work because of non-availability of cement and there was no fault on his part. According to plaintiff the value of the work done by him till that date was Rs. 8,322.48. The plaintiff was also entitled to damages for illegal rescission of the contract. Then the plaintiff sent a legal notice dated 9-7-1985 to the defendant calling upon the defendant to make payment of Rs. 8300/- along with interest @ 10% per annum. The defendant sent reply of the notice on 3-8-1985 blaming him for his failure to complete the work under contract within the stipulated time. It was alleged therein that no work had been done at the site. The plaintiff therefore filed the suit for recovery of Rs. 8300/- plus interest amounting to Rs. 2490/- total Rs. 10,790/-.

The defendant contested the suit and filed written statement asserting therein that the plaintiff had not dug foundation. No work regarding the contract was done by the plaintiff as per agreement between the parties. The allegations of the plaintiff that he went to Takoli to meet the Pradhan were denied. The defendant showed his ignorance regarding letter sent by Up Pradhan to the plaintiff. According to the defendant, plaintiff had not done any work at the spot. It was pleaded that the Pradhan of the defendant tried to contract the plaintiff to remove the objections of the Block Development Officer regarding issue of cement permit, but he failed to meet him, therefore, letter dated 27.2.83 was sent to the plaintiff. It was asserted that for cancellation of contract, the plaintiff himself was liable. It was also asserted that he was not entitled to any damages. It was further pleaded that no notice under Section 106 of the U.P. Panchayat Raj Act had been served before filing the suit and that the suit is barred by limitation.

On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff did the work under the contract between the parties? If so, was the work worth Rs. 8322.48?

2. Is the notice u/s 106 U.P. Panchayat Raj Act invalid?

3. Is the suit barred by time?

4. Whether the plaintiff could not perform the contract due to latches of the defendant?

5. To what relief and amount, if any, is the plaintiff entitled?

The learned trial court decided Issue No.3 on 10-5-1989 as preliminary issue and it was held that the suit is not barred by limitation. The learned District Judge recorded the evidence of the parties, heard them and after perusing the evidence took up

Issue Nos. 1 and 4 for decision. The learned Judge found that that the defendant passed a resolution Ext. 1 dated 9-1-1983 to give contract to the plaintiff for construction of building on executing an agreement deed. It was also found that agreement deed Ext. 2 dated 25.1.1985 was executed between the parties regarding the disputed work. The learned District Judge after dealing the evidence of the parties came to the conclusion that "*there is satisfactory evidence of the plaintiff that he collected stones, stone ballast and bajri at the site. The distance of cartage given in the report Ext. 14 is contradictory to the oral evidence. There is consistent evidence of the plaintiff of that a sum of Rs. 3200/- was spent in the collection of stones, stone ballast and bajri.*" The "learned District Judge ultimately held that the plaintiff had done worth Rs. 3,402/- and he could not perform the contract due to his own latches. On Issue No.2, it was held that the notice Ext. 7 issued by the plaintiff was a valid notice and the same was in accordance with the provisions of Section 106 U.P. Panchayat Raj Act. In the result, the plaintiff was found entitled to Rs. 3402/- along with Rs. 1020.60 as interest @ 10% p.a. total Rs. 4422.60 from the defendant. The suit was accordingly decreed in favour of the plaintiff-respondent.

The impugned judgment and decree has been assailed on the ground that the learned District Judge failed to appreciate the evidence properly and the decree passed by the court below is not sustainable. On the other hand, the learned counsel for the respondent while supporting the impugned judgment has submitted that the court below that passed the decree on proper appraisal of the evidence on record and the suit of the plaintiff has been rightly decreed against the appellant-defendant.

I have heard learned counsel for the appellant and the respondent and perused the evidence on record.

In this case, the plaintiff-respondent filed suit for recovery of Rs. 10,790/- along with interest @ 12% per annum, pendente lite and future. The trial court found the plaintiff successful in proving his case for recovery of Rs. 3402/- only and he did not find favour with the plaintiff for the rest part of the suit. Now, it has to be seen whether the suit of the plaintiff was liable to fail in toto as contended by the appellant.

In paragraph no.1 the plaintiff had stated that the defendant gave a contract for construction of school building at village Kafald to him for Rs. 46,400/- and the agreement therefor was executed on 25.1.1983. In the written statement, this allegation is admitted. Paragraph no.2 of the plaint that defendant was required to supply timber free of cost is also admitted. In paragraph no.3, it was alleged that the defendant was required to make arrangement for the permit of cement. In para no.9 he has averred that on 13.2.1983, he went to meet the Pradhan, but he was not available. He was informed by Up Pradhan Mani Ram that he should stop the construction work till the return of the Pradhan who had gone out. The averment was partly admitted and it was said that regarding cement permit, the plaintiff was required to remove the objections. The plaintiff averred in para no. 15 that he had done the work to the tune of Rs. 8322.48 till the date of cancellation of contract, which was not admitted by the defendant.

The main controversy in dispute has been dealt with by the District Judge on Issue Nos.1 and 4. The agreement deed Ext. 2 is dated 25.1.1985. In the agreement clause (2), it is provided that the Pradhan of Gaon Sabha would arrange permit for cement, but in case there be any objection in obtaining the permit, the contractor would remove such objections. Plaintiff Raghunandan Prasad has examined himself as P.W.1. In his statement, he stated that he continued the work upto February 1983 and March 1983. Ext. 9 is the letter dated 13.2.1983 thereby the plaintiff was directed to stop the work. Ext. 10 is the letter sent by the plaintiff to

the defendant informing that the work was not being done for want of cement. Ultimately, the contract was cancelled vide Ext. 6 dated 9.4.1983 on the ground that the plaintiff had not carried out the work in pursuance of the contract.

The only point for determination in this appeal is whether the work was carried to the tune of Rs. 8322-48 by the plaintiff in execution of the contract between the parties.

It is not disputed that the plaintiff was required to remove the objections regarding issue of cement permit. P.W.1 Raghunandan Prasad PW 1 has stated in his testimony that he continued the work upto February and March 1983. As indicated above, the contract was cancelled vide Ext. 6 dated 9-4-1983. In paragraph 18 of his cross-examination, P.W.1 has stated that Kidoo, Mohnanand and Bhola carried Bajri and stones to the spot in February-March 1983 and a sum of Rs. 3200/- was paid to them. In his further cross-examination, he stated that he employed 6 or 7 labourers for digging the foundation and he had paid a sum of Rs. 4,000/- to them. It is note-worthy that none of these persons was examined in the witness box. According to the plaintiff himself, the work was undertaken on 27th or 28th January 1983 and he continued the work upto March 1983. However, the plaintiff never thought it proper to get the work done by him evaluated. The Junior Engineer evaluated the work in August or September 1984. The plaintiff could not mention the measurements of the foundation, though according to him the foundations were dug by the Junior Engineer Chandel as per sanctioned map. The plaintiff has produced Abrar Ahmad P.W.2 in support of his case. PW2 has stated that he measured the executed work in 1984 on oral orders of the Block Development Officer. This witness has proved his report Ext. 14 whereby the total work purported to have been done to the extent of Rs. 8322/-. P.W.2 has stated that plaintiff did not take any steps for obtaining permit of cement. P.W.3 Kidu produced by the plaintiff stated on oath that stones and Bajri worth

Rs. 3200/- were collected at the spot and he received this amount as cartage.

The observations made by the District Judge in the impugned judgment at the conclusion of finding on Issue Nos. 1 and 4 are as follows:-

"As discussed above, the report Ext. 14 is contrary to the oral evidence led by the plaintiff, Raghunandan Prasad Pandey, and so it cannot be relied upon in toto. There is satisfactory evidence of the plaintiff that he collected stones, stone ballast and bajri at the side. The distance of cartage given in the report Ext. 14 is contradictor6y to the oral evidence. There is consistent evidence of the plaintiff that a sum of Rs. 3200/- was spent in the collections of stones, ballast and bajri. There is no convincing evidence on record regarding the mud mortar as shown in the report Ext. 14. This report shows site development worth Rs. 1000/-."

The learned District Judge also found that excavation work worth Rs. 202.48 having been done by the plaintiff. Ultimately, the trial court came to the conclusion that the plaintiff was successful in proving his case for recovery of Rs. 3402/- on account of work carried out by him in execution of the contract. Accordingly, the trial court has found favour with the plaintiff's case for recovery of Rs. 3402/- out of the amount of Rs. 8300/- claimed by the plaintiff. As indicated above, it was for the plaintiff to have removed the objections regarding cement permit, which he failed to do, therefore, the trial court was fully justified in holding that the plaintiff did not get the cement due to his own latches and stopped the work on 13.2.1982 as mentioned in the plaint.

It is pertinent to mention here that the appellant-defendant has not shown as to why the P.W.2 Abrar Ahmad and P.W.3 Kidu, who are the witnesses of the plaintiff-respondent are interested in giving false evidence against the defendant. Even

D.W.1 Bhupati Ram has not stated a single word as to why these two witnesses of the plaintiff bore any grudge against the defendant or they were interested to favour the plaintiff in any manner. No evidence has come on record to show that they are not independent witnesses. Therefore, in this view of the matter, the testimony of P.W.2 and P.W.3 has to be relied upon to the extent the same is consistent with the plaint case. In my view, the District Judge has considered all the material aspect of the case while deciding Issue Nos. 1 and 4.

From the side of the defendant-appellant, Sri Bhupati Ram, Pradhan of Gram Sabha Kafald was examined as D.W.1. He has admitted that the plaintiff Raghunandan Prasad took the contract for construction of school and he was required to complete the work by 31.3.1983. He however denied to have done any work in execution of the contract bond with the result the agreement was cancelled. This witness has denied the plaint case as well as the assertions made by the plaintiff as P.W.1. But this witness has not stated a single word regarding the testimony of P.W.3 Kidu who has specifically stated that he received payment of Rs. 3200/- towards cartage charges from the plaintiff for collection of stones, bajri etc. at the site.

Thus having considered the entire evidence on record, especially by the statement of P.W. 3 that the plaintiff had incurred expenses of Rs. 3200/- towards collection of stones, bajri etc. at the site. From the report Ext. 14 which has been elaborately discussed by the trial court, it comes out that sum of Rs. 1,000/- was incurred towards site development by the plaintiff besides as sum of Rs. 202/- spent on excavation. Thus, the learned trial court has rightly held that the plaintiff was entitled to recover a sum of Rs.3402/- from the defendant. It was rightly concluded by the trial court that as per clause (2) of the contract, it was for the plaintiff to have removed objections in connection with cement permit and that was not done for the latches on the part of the plaintiff. The learned District

Judge has thrashed out the truth after considering all the aspect of the case and has discussed the evidence in detail at page nos. 5 to 11 of the impugned judgment. I do not find any infirmity or illegality in the findings recorded by the trial court.

In addition to the amount of Rs. 3402/-, the trial court has awarded interest @ 12 % per annum to the plaintiff, which comes to Rs. 1020.60, thereby the suit of the plaintiff-respondent was decreed for a total sum of Rs. 4,422.60 along with pendente lite and future interest @ 12% per annum.

No other point was urged or argued before me in this appeal.

In the result, the appeal has no merit and is liable to be dismissed outright.

The appeal is dismissed with no order as to costs. The judgment and decree, under appeal, are upheld.

(B.S. Verma, J.)

RCP